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Attorneys for Defendant R. Darr

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**MATTHEW L. JOHNSON,**

Plaintiff,

**v.**

**DARR,**

08-CV-0080-DMS (POR)

**NOTICE OF MOTION AND MOTION  
TO DISMISS COMPLAINT**

Hearing: August 28, 2008  
Time: 2:00 p.m.  
Courtroom: H  
Judge: The Honorable  
Louisa S. Porter

**No Oral Argument Required**

TO MATTHEW L. JOHNSON, Plaintiff in pro per:

PLEASE TAKE NOTICE that on August 28, 2008, at 2:00 p.m., or as soon thereafter as the matter can be heard in the above-referenced court located at 940 Front Street, San Diego, California, Defendant Darr will move this Court for dismissal of the Complaint under Federal Rule of Civil Procedure 12(b) (unenumerated), on the ground that Plaintiff failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). 42 U.S.C. § 1997e(a).

1 This motion is based upon this notice of motion and motion, the supporting  
2 memorandum of points and authorities, the supporting declaration of T. Emigh, Defendant's  
3 request for judicial notice, the Court file in case number 06-CV-01257-JAH (POR), and the  
4 Court file in this case.

5 Dated: July 17, 2008

6 Respectfully submitted,

7 EDMUND G. BROWN JR.  
Attorney General of the State of California

8 DAVID S. CHANEY  
Chief Assistant Attorney General

9 ROCHELLE C. EAST  
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10 MICHELLE DES JARDINS  
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12  
13 /s/Phillip Lindsay

14 PHILLIP LINDSAY  
15 Deputy Attorney General  
Attorneys for Defendant R. Darr

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Johnson, Matthew L. v. Darr**

No.: **08CV0080 DMS POR**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On July 18, 2008, I served the attached **NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Matthew L. Johnson  
D-33369  
California Training Facility  
DW-315 UP  
CTF Central  
P.O. Box 689  
Soledad, CA 93960

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 18, 2008, at San Diego, California.

K. Alvarez

Declarant

Signature